Detailed Action

The 112, second paragraph rejections of claims 17, 23-27, and 30-32 are removed in light of applicant's amendments filed 3/1/2010.

(modified rejection)

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 17, 23-27, 30-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of USPN 7482369 which used to be Application No. 11374720 (US PG Pub 20060178409). Although the conflicting claims are not identical, they are not patentably distinct from each other because the USPN teaches a method of treating retinopathy or age-related macula degeneration which are neoplastic diseases, with a genus of compounds which overlap is scope with the instant method of treating retinopathy or age-related macula degeneration or treating the human or animal body or the treatment of a

neoplastic disease, or the treatment of a neoplastic disease which responds to an inhibition of the VEGF-receptor tyrosine kinase activity.

USPN '369 teaches the method for the treatment of retinopathy or age-related macula degeneration, of a neoplastic disease which responds to an inhibition of the VEGF-receptor tyrosine kinase activity with a compound of formula I wherein R1 represents H or lower alkyl, R2 represents H, R3 represents perfluoro lower alkyl, X is O or S. The difference between the copending method and the instantly claimed method is the teaching of a method which overlaps in subject matter with the instant method. It would have been obvious to one of ordinary skill in the art to select various known radicals within a genus to prepare structurally similar compounds for the same and/or similar uses. Accordingly, the methods of treating are deemed unpatentable therefrom in the absence of a showing of unexpected results for the claimed methods over those of the generic copending methods.

(new rejections)

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 27 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. In clam 27, line 3, the phrase "for use in a method for the treatment of the human or animal body." is unclear. It is unclear how the human or animal body is being treated and if diseases are being treated.

3. Regarding claim 32, the phrase "and the reaction in salt form is possible" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Response to Applicant's remarks

The obvious double patenting rejection above is maintained because the applicant did not rebut the rejection or file a terminal disclaimer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binta M. Robinson whose telephone number is (571) 272-0692. The examiner can normally be reached on M-F (9:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0670.

A facsimile center has been established. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machine are (703)308-4242, (703305-3592, and (703305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

/Binta M Robinson/
Examiner, Art Unit 1625

/Janet L. Andres/

Supervisory Patent Examiner, Art Unit 1625